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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

RICHARD (DICK) J. ACKERMAN, et al.,
Petitioners,

—v.—

JULIE ANN GILES,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

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QUESTION PRESENTED

Whether the Ninth Circuit correctly held, as every other court to consider the issue has held, that jail officials may not strip search a person arrested for a minor traffic offense without a reasonable suspicion to believe that contraband will be found?

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STATEMENT OF THE CASE

The parties submitted this case to the district court on a stipulated set of facts. See Giles v. Ackerman, 746 F.2d 614, 615 (9th Cir. 1984)(per curiam). For some unexplained reason, petitioners have submitted the case to this Court on a different set. They have eliminated numerous important stipulations and have substituted allegations of their own. The facts as stipulated to by the parties in the district court are as follows:

During the afternoon of October 26, 1981, plaintiff Julie Giles, then 29 years old, was driving her car in Idaho Falls, Idaho, the town in which she lived, when city police officer Martin Bazar stopped her. Officer Bazar informed Ms. Giles that her car registration had expired. Upon making a computer check, Officer Bazar learned that an

arrest warrant had been issued for Ms. Giles some six months earlier for failure to appear on several parking tickets. The officer placed Ms. Giles under arrest, put her in the back seat of his patrol car, and took her to the Bonneville County Jail.

According to Officer Bazar, Ms. Giles was "most cooperative" during the entire time he was with her, even though she seemed surprised to learn of the arrest warrant. (As it turned out, the parking tickets had been issued to her husband, and Ms. Giles was unaware of them.) At no time did the officer frisk, pat down, or handcuff Ms. Giles or feel in any danger from her. The officer allowed Ms. Giles to keep her pocketbook without inspection. Upon their arrival at the jail, Officer Bazar escorted Ms. Giles to the central booking area, where he gave her a copy of the arrest warrant and issued her a citation for the expired registration. He

then remanded her to the custody of jail officials and left the jail.

Ms. Giles had never been arrested before. When she first walked into the control center, a jail officer asked her if she would be bonding out. She replied that she did not have any money with her and that her husband was out of town. The officer then asked if she had any friends who could help her bond out. Ms. Giles replied that there was no one she could think of who would bond her out.

For the next 15 or 20 minutes, no one spoke to her. After a while, she got up and walked around the control center, looked into some of the cells, and walked up and down the corridor. Following this period of time, Officers Elaine Shumway and Jere Doten began the booking procedure. They catalogued the items in Ms. Giles's purse, took medical and biographical information from Ms. Giles, and

fingerprinted and photographed her. After a telephone call by Officer Doten, Ms. Giles was informed that her bail had been set at $157. The booking procedure lasted approximately 35-45 minutes. At no time before or during the booking procedure was Ms. Giles informed that she would be strip searched.

It is defendants' policy to strip search all persons who are to be housed in the Bonneville County Jail. Section 501.03(5) of the Jail's "Policies and Procedures Manual," promulgated by defendants on January 1, 1981, states as follows:

> The subject will then be placed in the booking cell, and all items and clothing removed, strip searched, and all property receipted for on the arrest record. (Emphasis added.)

Jail officers are given training on how to conduct the strip search. These officers are shown a film which demonstrates how the strip search is to be conducted on both male and

female prisoners. The search requires the arrestee to remove all clothing, face the wall, bend over and expose the anal and genital areas for visual inspection, turn around and raise the arms for inspection of the armpits, show the ears for inspection, and run their fingers through the hair on their head. In addition, all clothing is thoroughly inspected. Defendants' strip search policy is "non-discriminatory," that is, all arrestees entering the general jail population, even for a short period of time, must first undergo a strip search in strict adherence to the procedure outlined above.

After Ms. Giles had been booked, Officer Shumway took her into a cell located within the control center. There, Ms. Giles was asked to remove all of her clothing. She was then subjected to a strip search, although Officer Shumway decided not to require Ms. Giles to bend over. According to the

officer, this part of the search was not necessary in this instance.

Ms. Giles was very embarrassed by the strip search, even though Officer Shumway extended to Ms. Giles "all due courtesy." Dep. of Shumway at 40. This embarrassment was apparent to Officer Shumway, who described the plaintiff as having been "very upset by it" and "embarrassed." Id. at 23.

Officer Shumway was asked during her deposition whether she would not have strip searched Ms. Giles had she not been compelled to do so by the Policies and Procedures Manual. She replied, "If I weren't compelled to, no, I probably would not have.... She was well-dressed. She was clean and neat. Her charges weren't the type [to suggest the need for a strip search].... I would not have strip searched Julie Giles, no, because of the charges and from everything considered." Id. at 54-55.

Following the strip search, Ms. Giles telephoned her husband's office and was connected with her husband, who was calling his office at that same moment from out-of-town. Ms. Giles asked him to return to Idaho Falls and to get her out of jail. Mr. Giles arrived about an hour later, posted bond, and Ms. Giles was released from jail.

REASONS FOR DENYING THE WRIT

A. The Case Does Not Merit Review

Nothing in the decision below warrants review. It is narrowly tailored to the unique facts of the case. The Ninth Circuit specifically declined to address the broad question concerning the jail's body cavity search policy--a policy which applied to all inmates of the jail--and instead decided the much narrower question of whether the strip

search of Julie Giles, arrested for a minor traffic offense and temporarily unable to post bond, was valid. Giles v. Ackerman, 746 F.2d at 616 n.2. The court's decision directly applies only to those relatively few persons who are unable to post bond for a minor offense.

Few jails routinely engage in the practice challenged here--the strip searching of persons arrested for minor traffic offenses. There is no need for this Court to review a decision that has such limited application and is narrowly drawn to the unique facts of this case.

B. The Decision Below Does Not Conflict With Any Federal Court Decision.

Four United States Courts of Appeals have considered the constitutionality of routine strip searches of persons arrested for minor offenses. All four courts have

reached the same conclusion: reasonable and individualized suspicion is required before the strip search may be conducted. Giles v. Ackerman, 746 F.2d 614 (9th Cir. 1984) (per curiam); Hill v. Bogans, 735 F.2d 391 (10th Cir. 1984) (holding unconstitutional a strip search far less intrusive than the one that happened here);[1] Tikalsky v. City of Chicago,

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[1] Petitioners contend that the strip search of Julie Giles was so attenuated as to require special review of this case. This contention has no basis in fact or in law. This was hardly a cursory search. As the stipulated facts reveal, Ms. Giles was required to remove all of her clothing in the presence of a jail officer, face the wall, raise her feet so that her soles and toes could be inspected, turn around and raise her arms for the inspection of her armpits, show her ears for inspection, and run her fingers through the hair on her head. As the Ninth Circuit stated: "The parties do not dispute the nature of the intrusion. They agree that Giles's privacy was invaded in a frightening and humiliating manner." Giles v. Ackerman, 746 F.2d at 617.

As a matter of law, the intrusion here cannot be minimized. In forcing Ms. Giles to remove all of her clothing, the police conducted the most intrusive type of search in the law of search and seizure. "Body searches are unique in the nature of the intrusion on personal privacy.... [C]ourts are always careful to respect the higher privacy interests involved in body searches." Hall, Search and Seizure 507 (1982); cf. Hunter v. Auger, 672 F.2d 668, 674 (8th Cir. 1982)
[cont'd. on next pg]

687 F.2d 175 (7th Cir. 1982); Logan v. Shealy, 660 F.2d 1007 (4th Cir. 1981), cert. denied, 455 U.S. 942 (1982).

Thus the decision below does not conflict with any federal court decisions or with any decision of the Supreme Court. Although petitioners contend that such cases as United States v. Edwards, 415 U.S. 800 (1974), and Illinois v. Lafayette, ___ U.S. ___, 77 L.Ed.2d 65 (1983), support their view, those cases belie petitioners' claim. Indeed, the Court specifically stated in Lafayette, 77 L.Ed.2d at 71 n.2: "We were not addressing in Edwards, and do not discuss here, the circumstances in which a strip search of an arrestee may or may not be appropriate."

Petitioners also mischaracterize this Court's decision in Bell v. Wolfish, 441 U.S.

("Indeed, a strip search, regardless how professionally and courteously conducted, is an embarrassing and humiliating experience.").

520 (1979), by arguing that Bell upheld body cavity searches that were more intrusive than the "disrobement" in this case. Bell was not a wholesale endorsement of body cavity searches; rather, the Court balanced the private and governmental interests at stake and thereby rejected the inmates' claim that body cavity searches could never be conducted on less than probable cause following contact visits with persons from outside the detention facility. 441 U.S. at 558-60. In the present case, the court below undertook a thorough balancing of the factors deemed relevant in Bell. As the court below held, and as every other court to address the issue has held, Bell does not condone all strip searches under all circumstances. See, e.g., Hill v. Bogans, 735 F.2d at 393-94; Mary Beth G. v. City of Chicago, 723 F.2d 1263, 1273 (7th Cir. 1983); Hunter v. Auger, 672 F.2d 668, 674 (8th Cir. 1982); Logan v. Shealy,

660 F.2d at 1013.

C. The Decision Below is Eminently Correct

The decision below is a careful application of the Fourth Amendment reasonableness standard. The decision delicately balances a jail's interest in security with an individual's interest in personal privacy. It holds that jail officials may protect their security interests by conducting a strip search, but, as applied to persons arrested for minor traffic offenses, this intrusive search may occur only when there is a reasonable belief that contraband will be found. A reasonable belief may be grounded upon any one of numerous factors, including the nature of the offense, the arrestee's appearance, conduct, and prior arrest record. Giles v. Ackerman, 746 F.2d at 617; cf. Dufrin v. Spreen, 712 F.2d 1084 (6th Cir. 1983) (person arrested for felonious assault may be subjected to

visual body cavity search at the jail).

Four federal courts of appeals have considered this issue, and all four have reached the same conclusion. See supra at 9-10.[2] There must be some "objective standard," Delaware v. Prouse, 440 U.S. 648, 654 (1979), against which to judge the conduct of jail officials in cases of this nature. The Ninth Circuit was eminently correct in adopting a reasonableness standard given the fundamental interests at stake, and every other court to consider this issue has done the same. The Ninth Circuit then conducted an extensive review of the relevant factors and concluded

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[2] In addition, at least six other federal court decisions have imposed a similar restriction on jail officials regarding the use of body cavity searches. See Mary Beth G. v. City of Chicago, 723 F.2d 1263 (7th Cir. 1983); Salinas v. Breier, 695 F.2d 1073 (7th Cir. 1982), cert. denied, ___ U.S. ___, 78 L.Ed.2d 118 (1983); Bovey v. City of Lafayette, 586 F. Supp. 1460 (N.D. Ind. 1984); Hunt v. Polk County, 551 F. Supp. 339 (S.D. Iowa 1982); Tinetti v. Wittke, 479 F. Supp. 486 (E.D. Wis. 1979), aff'd per curiam, 620 F.2d 160 (7th Cir. 1980); United States ex rel. Guy v. McCauley, 385 F. Supp. 193 (E.D. Wis. 1974).

that the jail policy was not reasonable under the circumstances.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

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